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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,247	04/24/2006	Jean-Claude Volckmann	930024-2041	8015

7590 08/27/2009  
Ronald R Santucci  
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745 Fifth Avenue  
New York, NY 10151

EXAMINER
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SINGH, SUNIL K

ART UNIT	PAPER NUMBER
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3732

MAIL DATE	DELIVERY MODE
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08/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/564,247	VOLCKMANN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sunil K. Singh	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/17/2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacklich (US 4,444,560) in view of Kumar (US 5,183,388).

Jacklich adequately discloses a device 7 capable of being molded including: a body 9, a part 37 to contain the product and an orifice 33 for ejecting the product; a drive cylinder 61 with teeth 63 consisting of two consecutive crests connected by a radius (see figure 1) moving in a bore 45; a lever 11 acting on the teeth of the cylinder through an articulated pawl 57 and returned by a pawl 65; wherein the lever 11 is

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connected by means of a joint (the hinge connection at 51) with the ability to be dislocated or attached without requiring a tool; wherein the drive cylinder 61 has a sector 69 with no teeth and has one end shaped to engage in a slot 49 formed on the nonreturn pawl; and wherein the joint comprises a pivot pin and a slot (Figs. 1,2). However, Jacklich does not specifically disclose the pin being adapted to elastically deform to engage the slot.

Kumar teaches a device that includes a pin (23) and a slot (1); wherein the pin is made of a material that allows the pin to elastically deform when being inserted in the slot (column 4, lines 40-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Jacklich to include an elastically deformable pin, as taught by Kumar, in order to provide a easier means of attaching and removing the lever from the body that is well known in the art.

4. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vadas (4340367) in view of Kumar (US 5,183,388).

Regarding claim 1, Vadas adequately discloses: a device (figures 1 – 4) for ejecting a product, including a product container (L) with an orifice (20) for ejecting the product, a drive cylinder (100) with teeth (102), an articulated lever (40) acting on the drive cylinder through an articulated pawl (130) articulated to the lever, and a nonreturn pawl (160), wherein the lever is connected to the body by means of a joint (41,42) that is capable of dislocating/attaching without requiring a tool. With respect to claims 5, and 8 – 10, Vadas further discloses a liner (170) able to rotate with respect to the body,

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and a liner (110) that is able to have translational movement (sliding; column 5, lines 37 – 42) with respect to the body, and has a means of connection (must inherently be connected) to the part intended to contain the product. Further, the body is made of a material that can be molded. Addressing claims 7 and 8, Vadas further teaches a liner with a stud (stop shoulder 114) designed to act on a pawl (column 5, lines 54 – 65). Vadas further discloses the joint comprises a pivot pin (42) and a slot (Fig. 1). However, Vadas does not specifically disclose the pin being adapted to elastically deform to engage the slot. Vadas also fails to disclose a liner being elastically deformable part constituting the non-return pawl.

Kumar teaches a device that includes a pin (23) and a slot (1); wherein the pin is made of a material that allows the pin to elastically deform when being inserted in the slot (column 4, lines 40-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Vadas to include an elastically deformable pin, as taught by Kumar, in order to provide a easier means of attaching and removing the lever from the body that is well known in the art. Furthermore, it would have been obvious to one of ordinary skill in the art, at the time of applicant's invention, to select an elastic material for the since it has been held that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in "Sinclair and Carroll Company v. Interchemical Corporation" (325 US 327, 65 USPQ 297 (1945)).

***Response to Arguments***

5. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil K. Singh whose telephone number is (571) 272-3460. The examiner can normally be reached on Monday-Friday (Increased Flex Schedule).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris L. Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

08/26/2009

/Sunil K Singh/  
Examiner, Art Unit 3732

/Ralph A. Lewis/  
Primary Examiner, Art Unit 3732